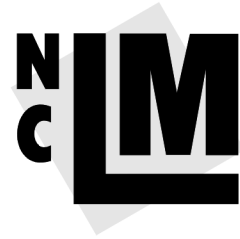




North Carolina  
Association of  
County Commissioners

North Carolina  
League of  
Municipalities



June 21, 2002

TO: Mayors, Managers/Administrators/Clerks & Attorneys

FROM: Charles Archer, NCLM Director of Intergovernmental Relations  
Paul Meyer, NCACC Assistant General Counsel

SUBJECT: **FCC CABLE MODEM RULE MAKING – REPLY COMMENTS**

Last month we sent a communication advising you of the FCC's ruling that cable modem service is not a "cable service" subject to local franchise fees, but an "interstate information service". The FCC issued a Notice of Proposed Rule Making (NPRM) raising a series of questions about how this interstate information service should be treated for purpose of public rights-of-way access and other interactions with local governments and cable modem subscribers.

The FCC is accepting "reply comments" through **July 16, 2002** on the proposed rules. We want to encourage you to submit written reply comments to the FCC, citing specific impacts to your community. The Alliance of Local Organizations Against Preemption (ALOAP) that includes NLC and NACo has submitted comments through ALOAP's legal counsel.

Enclosed are sample comments to use in submitting reply comments to the FCC and instructions on how to file comments with the FCC.

Please feel free to contact Charles Archer at the League ([carcher@nclm.org](mailto:carcher@nclm.org) or 919.715.3918) or Paul Meyer at the Association ([pmeyer@ncacc.org](mailto:pmeyer@ncacc.org) or 919.715.2893) if you have questions.

Enclosures

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<hr/>	)	
Notice of Proposed Rulemaking	)	
	)	
Appropriate Regulatory Treatment for	)	CS Docket No. 02-52
Broadband Access to the Internet Over	)	
Cable Facilities	)	
<hr/>	)	

**REPLY COMMENTS OF THE CITY OF WINSTON-SALEM**

These comments are filed by the City of Winston-Salem in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of Winston-Salem believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

1. Our community and the status of cable modem service.

Winston-Salem is a city with a population of 185,776. It is served by Time Warner Cable, which has approximately 53,000 subscribers. The cable system serving our community is a 750 MHz hybrid fiber-coaxial system. Cable modem service is offered in our community.

2. Our franchise and cable modem service.

The City of Winston-Salem's Ordinance governing cable television services was enacted by the Board of Aldermen in January, 2002. Section 34-88-C of the Cable Television Ordinance reads as follows: "cable internet service shall be considered Cable Service unless determined otherwise by applicable state or federal law." The Cable Television Franchise with Time Warner Cable requires that Time Warner Cable be subject to the terms and conditions of the City's Cable Television Ordinance. As a result, Time Warner Cable is required to provide cable service, to include cable internet service throughout the community. Section 34-151 of the City's Cable Television Ordinance reads as follows: "Every system shall pass by every single-family dwelling unit and multiple-family

dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies. Unless specified otherwise, service shall also be extended to commercial buildings on a consistent basis with the residential line extension policies.” Pursuant to these provisions, we are entitled to receive franchise fees on cable modem service. We received approximately \$130,000 in cable modem franchise fees in 2001. These payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms. We estimate that we will lose \$1,340,000.00 over the next five (5) years if we cannot charge a fee on revenues from cable modem service. Neither the franchise requirements nor the fees have prevented or delayed the roll-out of cable modem service in our community, indeed our ordinance encourages the wide distribution of cable modem service.

3. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by the cable operator. These include complaints about traditional video programming services and about cable modem services.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- When we get complaints about promotional practices, the complaint may apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is also subject to the following requirements under our franchise:

- the operator is required to provide cable modem service throughout its service area, and is prohibited from redlining.
- the operator is prohibited from discriminating against potential customers.

4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the universal availability of broadband services, it has to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,

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BRYCE A. STUART  
CITY OF WINSTON-SALEM  
100 EAST FIRST STREET, SUITE 407  
WINSTON-SALEM, NORTH CAROLINA 27101  
(336) 727-2123

City Manager for The City of Winston-Salem

July 10, 2002

Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Instructions for both forms of filing are included below. Comments must be filed by **Monday, June 17, 2002**, in order to be included in the comment round. Otherwise, they can be submitted until **July 16, 2002** to be considered in the Reply Comment round.

#### **FILING ELECTRONICALLY**

Comments filed through the ECFS can be sent as an electronic file via the Internet at <<http://www.fcc.gov/e-file/ecfs.html>>. Once at this page, click on "Submit a filing" on the left hand-side of the screen. In completing the transmittal screen, electronic filers should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number, in this case, 02-52.

Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Only one copy of an electronic submission must be filed.

#### **FILING BY MAIL OR IN PERSON**

Parties who choose to file by paper must file an original and four copies of each filing in CS Docket No. 02-52. All filings must be sent to the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554. All filings sent to the Commission by overnight delivery, e.g., Federal Express, must be sent to the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20024. Please note that there is a difference in the zip codes depending if the comments are sent via the United States Postal Service, or via an express mail carrier. In addition, comments must be received by the due date, regardless of when the comments were mailed.

All hand-delivered or messenger-delivered filings must be delivered to the Commission's filing location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002-4913. The filing hours at this facility are 8:00 a.m. to 7:00 p.m.

Parties must also serve the following with either one copy of each filing via e-mail or two paper copies: (1) Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at [qualexint@aol.com](mailto:qualexint@aol.com); and (2) Sarah Whitesell, Cable Services Bureau, 445 12th Street, S.W., 3-C488, Washington, D.C., 20554, [swhites@fcc.gov](mailto:swhites@fcc.gov). In addition, five copies of each filing must be filed with Linda Senecal, Cable Services Bureau, 445 12th Street, S.W., 2-C438, Washington, D.C. 20554, [lsenecal@fcc.gov](mailto:lsenecal@fcc.gov).